

statutory disqualifying provision when he made the statutory declaration. Accordingly, the appeal must be allowed, the order of acquittal set aside and a verdict of guilty substituted. The sentence will be the maximum fine of \$1,000/-.

Appeal Allowed

Solicitors: *Murphy & Dunbar.*

G. BALAN NAIR v. SINGAPURA DEVELOPMENTS PTE. LTD.

[O.C.J. (Rajah J.) August 25, 1982]
[Singapore — Originating Motion No. 8 of 1978]

Tenants' Compensation — Appeal against Board's decision disallowing tenant compensation — Controlled Premises (Special Provisions) Act (Cap. 267), s. 9A.

Landlord & Tenant — Controlled premises — Compensation claim — Tenant in physical occupation of premises — Scope of S. 9A, Controlled Premises (Special Provisions) Act (Cap. 267), s. 9A.

The applicant applied by way of Motion as the party aggrieved by a decision of the Tenants' Compensation Board disallowing him compensation on the ground that such decision was wrong in law. The Board dismissed his application for compensation on the ground that he was "not entitled to compensation as the provisions of section 9(1) (a) of the Act would apply in his case as he was unable to establish with reasonable uncertainty that he was in occupation of the controlled premises in question prior to January 1, 1968".

Held, allowing the application: (1) on the evidence before the Board, the landlords were aware that the applicant was in physical occupation of the premises in question and had even accepted payment for water consumption for the months of October and November 1967. Had this aspect of the case been canvassed before the Board, the result would have been different.

(2) the matter should therefore be remitted to the Board for assessment of compensation to the applicant.

ORIGINATING MOTION.

V. Ramakrishnan for the applicant.

Goh Joon Seng for the respondent.

Rajah J.: This is an application by way of Motion brought to the High Court by Govindan Balan Nair (the Applicant), being the party aggrieved by a decision of the Tenants' Compensation Board* disallowing him compensation on the ground that such decision is wrong in law.

The Board dismissed the application by the Applicant for compensation on the ground that he was "not entitled to compensation as the provisions

A of section 9(1)(a) of the Act would apply in his case as he is unable to establish with reasonable certainty that he was in occupation of the controlled premises in question prior to January 1, 1968." (Page 70 of Record of Appeal).

B It is common ground that the Applicant was not only in occupation of No. 36, The Arcade, Raffles Place (the premises) but also its tenant as from January 1, 1968. However, the Applicant contended that he was not only tenant of the premises as from January 1, 1968 but that he had been tenant thereof prior to January 1, 1968 whereas the Landlords maintained that the tenancy, in so far as they and the Applicant were concerned, commenced on January 1, 1968 and not before, and that, if the Applicant were in occupation of the premises as claimed by him, such occupation was in breach of Clause 2(b) of the Tenancy Agreement, which prohibits subletting and parting with possession of the premises, dated the 6th day of November 1967 made between the Landlords (British and Malayan Trustees Ltd.) and Mr. Alwee Alkaff (Page 91 of the Record) which states that the said Mr. Alkaff had become tenant of the premises from October 1, 1967. The Applicant, as previously stated, became the tenant of the premises as from the 1st day of January 1968 under an Agreement dated February 15, 1968 made between the Landlords and the Applicant. His counsel's contention before me was that if the Applicant was not tenant of the premises from January 1, 1968 then he was in occupation thereof within the meaning of section 9A of the Controlled Premises (Special Provisions) Act (Cap. 267) (the Act) prior to that date. It is clear from the evidence, the letter dated December 12, 1967 from the K.K. Police Station and that from the insurance company dated December 6, 1967, that the Applicant was in physical occupation of the premises before the January 1, 1968. Under section 9A of the Act the Board may, in its discretion, award compensation to a person who is neither a tenant nor a sub-tenant:

"9A — (1) Notwithstanding anything contained in this Act or any written law or rule of law, but subject to this section and section 9 of this Act, the Board may in its discretion award compensation to a person who is neither a tenant nor a sub-tenant if that person (hereinafter in this Act referred to as "the occupier") —

(a) has been continuously using or occupying any part of the controlled premises prior to the 1st day of January, 1968;

*The decision of the Board is reproduced as Appendix to this case.

- (b) has been paying to the landlord or a tenant, as the case may be, a sum of money, whether described as rent or not, as consideration for the use or occupation of such part of the controlled premises under an arrangement that does not constitute a tenancy;
- (c) is not by reason of such user or occupation in breach of any of the terms of a tenancy made between the landlord and the tenant, or if he is, such breach has been waived or acquiesced in by the landlord;
- (d) is bound to vacate such part of the controlled premises consequent upon an order of the Board made in the landlord's favour under section 4 of this Act."

If the Applicant complies with subsections (a), (b), (c) and (d) of section 9A it appears to me that he should qualify for compensation even though he may not be in occupation as tenant and is merely in physical occupation. Counsel for the Landlords conceded, and, in my view, rightly, that the Applicant complied with the provisions of subsections (a), (b) and (d). He, however, contended that the Applicant had offended against the provisions of (c) and was therefore ineligible for compensation. The evidence of the Applicant before the Board was that he had paid rent for the premises for the period November 27 to December 31, 1967 and that the receipt for such payment had been issued in the name of Arcade News Co.; this evidence was not controverted by the Landlords. The Applicant was, however, unable to produce the rent receipt for the period November 27 to December 31, 1967. The fact of payment of rent for the premises by the Applicant is further substantiated by the Applicant firm's accounts for the year 1967, which show that a sum of \$92/- odd was paid as at December 31, 1967 (Page 38 of Record). It is to be noted that the receipts for payment of water consumption in respect of the premises for the months of October and November 1967 are in the name of the Arcade News Co. whereas under the Tenancy Agreement produced by the Landlords, Mr. Alwee Alkaff was the tenant of the premises from the October 1, 1967 to December 31, 1967. Further, these two receipts were in the possession of the Applicant and produced by him at the hearing.

On the evidence before the Board I am satisfied that the Landlords were aware that the Applicant was in physical occupation of the premises in question and what is more, had accepted payment for water consumption for the months of October and November 1967. This aspect of the case was not, it seems to me, canvassed before the Board. Had it been, the result would, I feel, have been different.

I now remit this matter to the Board for assessment of compensation to the Applicant.

Application allowed.

A APPENDIX

Tan Boon Chiang (Chairman of the Tenants' Compensation Board): By Applications Nos. 7 to 82 of 1977 Singapura Developments Private Limited, as the owners and landlord of controlled premises known as The Arcade erected on Lot 233-1 of Town Subdivision I, sought an order from the Board for recovery of possession of the said premises for development within the designated development area declared as such under section 3(1) of the Controlled Premises (Special Provisions) Act. The Landlord proposed to erect a new building on the present existing site at an estimated cost of approximately \$20 million. The premises in question were occupied by 95 tenants and the user was commercial.

The development was approved subject to the waiver of a restrictive covenant under the State Lease, and acquisition from Government of a strip of State Land known as Lot 233-2 of Town Subdivision I. Both these conditions were satisfied by the Landlord.

The applications of the Landlord were supported by the affidavits of the Chief Executive of the Company setting out, on behalf of the Landlord, the necessary evidence and undertaking required to be produced and made by the Landlord in accordance with the provisions of section 4 of the Act. Evidence of the cost of development and the funds made available to the Landlord to execute the proposed development were produced together with the Landlord's undertaking to commence development within six months from the date possession of the land and premises was granted. Written permission for the project has been granted by the Ministry of National Development. The Landlord also undertook within 14 days of the making of the order for possession and the award of compensation to the tenants, sub-tenants, occupiers and licencees of the said controlled premises by the Board, to forward to it in accordance with the Act the relevant amounts of compensation.

None of the tenants opposed the applications for recovery of possession of the controlled premises in question. As the Board was satisfied that all the necessary statutory requirements for the proposed development had been complied with in accordance with section 4(2) of the Act, recovery of possession of the said premises was granted to the Landlord.

The claim in this application made by G. Balan Nair in respect of premises No. 36, 1st Floor, The Arcade, was supported by his affidavit which stated that he had been practising as an Advocate & Solicitor in the said controlled premises, with effect from November 27, 1967. Counsel for the Landlord on the other hand raised the issue that as Balan Nair's occupation was in fact effective only from January 1, 1968 he was by virtue of section 9(1)(a) of the Act not entitled to any compensation.

Balan Nair claimed that he was originally in practice with another firm, but having taken a decision to practise on his own, had by oral arrangement between himself and M/s British & Malayan Trustees Limited, the then agent of the Landlord, taken possession of the said controlled premises towards the end of 1967 after he had reached agreement also with the then tenant for the transfer of the premises to him. At that time he had decided to operate a partnership firm known as Nair & Majeed and the arrangement

arrived at for the possession of the premises stipulated that the rent should be \$76.50 per month, that a formal tenancy agreement is to be entered into between the parties at a subsequent date and that upon execution of the tenancy agreement the rental and other charges became due and payable by him to the Landlord.

Balan Nair, did not, apart from stating these alleged facts in his affidavit establish satisfactorily by evidential proof that these were indeed the case. He did not call anyone from British & Malayan Trustees Limited, nor the former tenant of the premises to testify to these facts. Balan Nair however claimed that consequent upon the said oral agreement, a formal tenancy agreement was executed on February 15, 1968. In fact the agreement stated that the tenancy was to be operative with retrospective effect from January 1, 1968. Two rent receipts produced by Balan Nair for the period just prior to January 1, 1968, for the months of October and November 1967, indicated that they were issued by British & Malayan Trustees Limited and were made out to Arcade News Company as tenant. The receipts established that that Company was the tenant of the premises prior to February 1968 and were issued in fact on February 11, 1968, a few days before the formal agreement was signed.

In support of his contention that he was in occupation of the premises before January 1, 1968 which is in fact the cut-off date for the entitlement of tenants to compensation as provided for under section 9 of the Act, Balan Nair attached to his supporting affidavit correspondence which he claims took place between the firm of Nair & Majeed with the Officer-in-Charge, Kandang Kerbau Police Station and the Claims Manager of the United India Fire & General Insurance Company Limited. These correspondence indicated that he had written to the Officer-in-Charge of the Kandang Kerbau Police Station in the one case on December 6, 1967 and had received a reply addressed to 36, The Arcade, 1st Floor, Singapore, from the Officer-in-Charge, on December 12, 1967. The other letter was written by the firm of Nair & Majeed, also in the month of December, on the 7th instant, and evoked a reply from United India Fire & General Insurance Company Limited on the 8th of that month also likewise addressed. Further in support of his claim for compensation, Balan Nair produced the Income & Expenditure Statement of the firm of Nair & Majeed for the period November 27, 1967 to December 31, 1967 which showed an expenditure for office rent of \$92.38, approximating the rent for the controlled premises at \$76.50 per month for that relevant period. This Income & Expenditure Statement was prepared by a firm of public accountants but there was no evidential proof that they were audited as stated so by the accounting firm itself.

Apart from these evidence by which he sought to establish proof of occupation by the firm of Nair & Majeed, of which Balan Nair was then a partner, as he alleged, from November 27 1967, no other evidence was produced. Against this evidence, there is the formal tenancy agreement signed on February 15, 1968 and back-dated to January 1, 1968 and rent receipts produced by the agents of the Landlord showing that the Arcade News Company was in fact the tenant of the controlled premises for October and November 1967. The Landlord in fact in contesting the claim for compensation by Balan Nair produced a deposit receipt which

A indicated that the tenancy commenced from January 1, 1968.

B A file produced by the Landlord's solicitor containing the original tenancy agreement and correspondence between a former tenant Alwee Alkaff and British & Malayan Trustees Limited indicated that on December 27, 1967, Alwee Alkaff the former tenant had written to British & Malayan Trustees Limited a letter requesting that the tenancy in question be transferred to G. Balan Nair as from January 1, 1968. The letter went on to state that if the Trustees would indicate how much rent was in arrears for the period ending December 31, 1967 he would agree to the adjustment of the refund of the rent deposit. The Trustees replied on January 10, 1968, having received Alkaff's letter on January 4, 1968, acknowledging the request to transfer the tenancy of the premises to G. Balan Nair as from January 1, 1968. They stated they were then presently considering and indicating to the then tenant that the rent for December of \$76.50 was outstanding together with water charges for the period October to December 1967, amounting to \$15.00. It is noted that these two outstanding items for payment to the Trustees amounted to exactly \$92.50 approximating the figure of \$92.38 appearing as office rent in the unaudited Income & Expenditure Statement of the firm of Nair & Majeed for the period from November 27, 1967 to December 31, 1967.

E Even if it is for one moment presumed that the contention of Balan Nair was correct in that he had been in occupation of the premises from November 27, 1967, it seems rather odd that having openly secured the consent of the tenants and the oral agreement which was alleged to have been originally reached between Balan Nair and British & Malayan Trustees Limited, the tenancy agreement was not dated from November 27, 1967. There was no reason why Nair having agreed, as he alleged, to occupy and be responsible for the premises from that date should have agreed that the tenancy should only date from January 1, 1968. On the other hand, the evidence produced by the solicitors for the Landlord clearly indicated that the first indication which the Trustees had of the proposed change of tenancy was a letter from the then out-going tenant himself, Alwee Alkaff, requesting that the tenancy be granted to Nair for the use of his firm of Nair & Majeed only from January 1, 1968. In fact the Trustees eventually agreed to grant Nair the tenancy as from that date and a formal agreement to that effect was signed on February 15, 1968. The evidence adduced by the Landlord's solicitor also indicated that as early as September 20, 1967, a certain M. Idrees Marican by his attorney M. Mohd Haniffa, who apparently operated the firm of Arcade News Company, requested the Trustees to transfer their tenancy of the controlled premises to Alwee Alkaff with effect from August 1, 1967, that being the date when the Arcade News Company terminated its business, as notified to the Registrar of Business Names. There was an attempt made to transfer the tenancy from November 6, 1967 to Alwee Alkaff and this agreement was stamped on November 8, 1967 and it was only after Alkaff had become the tenant for a short period of time that he wrote again to the Trustees on December 21, 1967 requesting the transfer of the tenancy to Balan Nair.

While it may be possible that Balan Nair had been negotiating for the premises prior to January 1, 1968 and even agreed to meet the arrears of rent owing to the Trustees

by Alwee Alkaff for such period prior to January 1, 1968, including the charges for the use of utilities, he himself as an advocate and solicitor accepted the tenancy only with effect from January 1, 1968. The formal tenancy agreement was executed only on February 15, 1968 with retrospective effect. Whilst Balan Nair had produced correspondence addressed to his firm at the controlled premises in the Arcade prior to January 1, 1968, such correspondence merely established that he had chosen to give that address and do not of themselves without further corroboration establish that he was in fact in occupation of the premises. Any prudent person intending to operate from new premises in the near future might have done this especially when he expected that a reply might not be forthcoming until after January 1, 1968. Without any other supporting or corroborating evidence of his occupation of the controlled premises prior to January 1, 1968, the mere production of these correspondence does not in our view establish conclusively that he was in occupation at any date prior to January 1, 1968.

Nair's accounts included an item of expenditure for rent. These were unaudited accounts and it is possible that Balan Nair may have agreed as part of the consideration for his securing the tenancy to meet the arrears of rent payable by Alwee Alkaff. It was natural for him to include such expenditure in the expenses of his new firm. This item in the unaudited accounts of themselves do not conclusively establish his occupation of the premises as from November 27, 1967.

The Board therefore had conflicting evidence, on the one hand some indication that Balan Nair and his firm of Nair & Majeed might have come into occupation of the controlled premises on November 27, 1967, and on the other hand more conclusive evidence in our view that the tenancy of the premises only commenced from January 1, 1968. We have given serious consideration to these conflicting evidence and have come to the conclusion that on balance the evidence more conclusively adduced by the Landlord ought to prevail. It is reasonable to conclude that Balan Nair, a person most aware of his rights in this regard, must have agreed that the tenancy of No. 36, The Arcade, should commence from January 1, 1968, although he may have incurred some expenses in connection thereto prior to that date which is now indicated in his accounts. Balan Nair is consequently not entitled to compensation as the provisions of section 9(1)(a) of the Act would apply in his case as he is unable to establish with reasonable certainty that he was in occupation of the controlled premises in question prior to January 1, 1968.

One other point upon which we need to rule in this Award is related to the contention made by counsel for Balan Nair that the onus of proof of occupation as from a certain date should lie with the Landlord other than the tenant in so far as the application of the provisions of section 9 of the Act is concerned. We do not agree with this contention and are of the view that the provisions of that section place the onus of proving continuous occupation prior to January 1, 1968 squarely upon the tenant himself whenever there is a doubt as to the actual date of occupation affecting the entitlement of any tenant to compensation under the Act.

Solicitors: V. Ramakrishnan & Co.; Chan, Goh & Co.

A MALAYSIAN REPORTS

VU SIEW CHIN v. WONG FAH YOON

[F.C. (Wan Suleiman, Syed Othman and Abdul Hamid F.J.) September 9 & December 30, 1981]

B [Johore Bahru — Federal Court Civil Appeal No.267 of 1980]

Practice and Procedure — Whether person who is sole owner of company can be sued — Point of law set down for hearing — R.S.C. 1957, O.25 r.2 & O.48A r.11.

C In this case the respondent claimed a sum of \$10,248.13 advanced to the appellant for the supply of logs. The money was paid to the appellant trading under the name of Westlake Timber Company at the request of the appellant. Judgment was given for the respondent and the appellant appealed. It was argued on the appeal that the respondent had sued the wrong party and should have sued Westlake Timber Sdn. Bhd.

D Held: a person who is the sole owner of a company may be sued in the company name.

Case referred to:

(1) *Mason & Son v. Mogridge* (1892) 8 T.L.R. 805.

E FEDERAL COURT.

P.S. Gill for the appellant.

Ong Ban Chai for the respondent.

Cur. Adv. Vult.

F Wan Suleiman F.J. (delivering the Judgment of the Court): The respondent, a timber merchant, claims for the refund of \$10,248.13 advanced to the appellant for supply of logs, interest thereon since date of issue of writ and for further and other relief.

G The respondent was trading in timber and the appellant supplied him with logs. The respondent paid a deposit of \$20,000 to Skt. Keratong Logging Sdn. Bhd. for supply of timber logs. This amount was transferred to Vu Siew Chin (the appellant) trading under the name of Westlake Timber Co. at the request of the appellant. The appellant supplied logs and the respondent paid further sums at various intervals. Then the appellant stopped supplying logs. The respondent commenced this action to claim the balance of deposit of \$10,248.13.

I At the hearing both counsel agreed to proceed on documents and points of law only. In short they were agreeing to the procedure under the old Rules of the Supreme Court contained in O.25 r.2 — Proceedings in lieu of demurrer. Rule 2 reads:—